

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1207 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KOLI TAPUBHAI SHARDULBHAI

Versus

CHHATHARIA SHAMSUDDIN TAYYABALI

Appearance:

MR JT TRIVEDI for Petitioners
MR UI VYAS for the respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 09/08/96

ORAL JUDGEMENT

Rule. Service of rule is waived by learned advocate Mr U.I.Vyas, for and on behalf of respondent No.1. Respondent No.2 came to be deleted upon the request of the learned counsel for the petitioner.

In this revision, the petitioners who are original appellants have challenged the order of dismissal of Misc. Civil Application No.54/95 by the appellate court

in absence of the party and the lawyer. The learned Extra Assistant Judge, Bhavnagar at Mahuva by his order dated 5.1.96 in Misc. Civil Application No.54/95 dismissed the said application for default of appearance. The application which came to be dismissed was for condonation of delay in filing the appeal before the District Court, at Bhavnagar.

Learned advocate Mr Vyas appearing for respondent No.1 states under instruction that the petitioner No.1 has filed an affidavit dated 5.8.96 whereby he has handed over the possession of part of the demise premises. In so far as the the present revision is concerned, this submission is not material. It will be open for respondent No.1 to make submissions in this regard before the appellate court at an appropriate stage.

After having examined facts and circumstances and hearing the learned advocates appearing for the parties, this Court is satisfied that the impugned order of the District Court at Bhavnagar is wholly unjustified. The application Ex.9 dated 18.12.95 was submitted on behalf of opponent No.1 herein requesting the appellate court to dismiss the application for condonation of delay and resultant dismissal of appeal. It appears from the record that a copy of the said application was not given to the other side and the other side was not given an opportunity of hearing before passing the impugned order. The impugned order, in the facts and circumstances of the case, is neither legal nor valid. Therefore, interference of this Court in this revision is called for. Therefore, this revision is required to be allowed with a direction to the appellate court to re-hear the Misc. Civil Application No.54/95 and also Ex.9 given therein after giving an opportunity of hearing to the parties.

Accordingly, this revision is allowed with a direction to the Appellate Court to re-hear the Misc. Civil Application No.54/95 and also Ex.9 given therein after giving an opportunity of hearing to the parties. The impugned order is accordingly quashed and set aside. The District Court, Bhavnagar is directed to accord priority to the hearing of this matter along with the application Ex.9. It is hoped that the District Court will expeditiously dispose of it in accordance with law after hearing the parties and preferably within five months from the date of receipt of writ of this Court. Rule is made absolute accordingly with no order as to costs.

